

SUPREME COURT OF THE STATE OF NEW YORK COUNTY OF KINGS

<p>Brett Wynkoop, Plaintiff, -against- Michael T. Yonker, Defendant</p>	<p>Index Number: <u>3863/19</u> Date Summons Filed: <u>2019-11-13</u> Plaintiff designates Kings County as the place for trial The basis for venue is: Venue is proper in this Court because Plaintiff resides in Kings County and the acts complained of happened in Kings County</p>
--	---

SUMMONS

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Pursuant to CPLR 503(a) venue is appropriate in this County because Plaintiff is a resident of Kings County.

Dated: Brooklyn, New York

NOV 13, 2019



Brett Wynkoop
Plaintiff
622A President Street
Brooklyn, NY 11215
917-642-6925
wynkoop@tekhq.com

RECEIVED

NOV 13 2019

KINGS COUNTY CLERK'S OFFICE

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

Brett Wynkoop, Plaintiff, -against- Michael T. Yonker Defendant	Index Number: 3863/19 Verified Complaint
---	--

Plaintiff hereby alleges as follows:

NATURE OF THE ACTION

1. Plaintiff brings this action and alleges upon personal knowledge as to himself and his own acts, and as to all other matters based upon the investigation conducted by him which included, as follows:
2. Plaintiff brings this action against Defendant for acts which include, but are not limited to, fraud, attorney deceit, and conspiracy to commit fraud.

SUMMARY

3. By a complaint dated 26 March 2012 Michael T Yonker Esquire brought a derivative action against Plaintiff on behalf of Kyle Taylor Esquire and Dr. Rajeev Subramanyam claiming that Wynkoop was making full and exclusive use of the cellar of 622A President Street in violation of the COOP building's Proprietary Lease.
4. In so bringing this action he concealed from the court the leases his clients had executed and instead used an unsigned blank lease that he claimed represented the lease his clients had signed. That document was missing the crucial page that provided the cellar was assigned to unit 1.

5. Not only was the document he offered the court not the best evidence, but the evidence he concealed showed his clients had no claim at all.
6. In an attempt to not waste the court's time Plaintiff presented to Yonker and his clients true copies of their executed leases on 7 November 2012. The executed leases showed the cellar of 622A was for the exclusive use of Apt 1.
7. Yonker refused to follow the rules of professional conduct and instead of withdrawing the baseless claim which amounted to fraud upon the court he pressed the case forward.
8. The case was eventually dismissed November 13 of 2013, but Yonker's clients, through another attorney, continued Post Dismissal motion practice into January of 2014.
9. Yonker was obliged by the rules of professional conduct to rectify the fraud upon the court.
10. Yonker did not rectify the fraud upon the court.

JURISDICTION AND VENUE

11. Plaintiff is a resident of Kings County, New York.
12. Defendant Yonker is an attorney licensed to practice in the state of New York.
13. Defendant Yonker maintains an office in New York County. (EX-A – attorney reg)
14. Upon information and belief Defendant Subramanyam resides in Kings County.
15. Defendants Taylor and Subramanyam own property in Kings County.
16. The acts complained of took place in the State of New York, County of Kings.
17. The Court has jurisdiction of this matter under Judiciary Law 140(b).
18. Venue is proper in this Court pursuant to CPLR §503 since Plaintiff is a resident of Kings County.

The Parties

Michael T. Yonker Esquire (Defendant)

19. Michael T. Yonker Esquire is an attorney licensed to practice law in the State of New York. He represented Kyle Taylor Esquire and Dr. Rajeev Subramanyam in the action Taylor -v- Wynkoop under index number 6548-2012 in Kings County Supreme Court.
20. Defendant's attorney registration number is 2952547.

Brett Wynkoop (Plaintiff)

21. Brett Wynkoop is a resident of 622A President Street, Brooklyn, NY 11215. He holds a 60% share interest in 622A President Street Owners Corporation, and also the Proprietary Lease on Unit 1, a garden duplex and Unit 2 at 622A President Street, representing 3 of the 5 habitable floors of the building.
22. Wynkoop purchased his shares and assumed his leases 28 February 1995.
23. Plaintiff purchased the shares associated with his units because Unit 1 was a legal duplex apartment and he had been granted permission to connect it to Unit 2 to form a Triplex apartment.

STATEMENT OF FACTS

24. 622A President Street Owners Corporation (COOP) is a domestic cooperative housing corporation which owns a single 1890s 4 story tenement building at 622A President Street, Brooklyn, NY 11215. The COOP was run in a cooperative manner with all shareholders consulting with each other and arriving at consensus on all matters associated with the management of the COOP and the building it owns until early 2012 when upon information and belief Shareholders Kyle Taylor Esquire and Dr. Rajeev Subramanyam hired Defendant Yonker to attempt a hostile takeover of the COOP that included ejection of Plaintiff.

25. Defendant filed a derivative complaint against Plaintiff alleging that Plaintiff annexed the cellar of the COOP to be part of Unit 1 without authority to do so. The complaint further stated that the occupancy of the cellar was illegal.

26. For 17 years prior no shareholder had voiced any concern or doubt as to the status of the cellar as part of Unit 1 because every lease signed by all shareholders assigned the cellar to the first floor unit.

27. To support the allegation of illegal taking of the cellar Defendant attached to court papers a blank unsigned lease which was missing one page contained in the leases signed by All Shareholders. That single page, called *Section 7A of the Proprietary Lease*, which Yonker omitted from his pleadings, showed the allegations he was making on behalf of his clients to be false.

28. Upon information and belief the best evidence rule is taught in law school and any licensed attorney had to know an unsigned and in all other respects blank lease was not the best evidence of the contract Shareholder Defendants were bound to. Upon information and belief Both Yonker and his client Kyle Taylor had to know this as attorneys licensed to practice in the state of New York.

29. Upon information and belief Yonker conspired with his clients to hide their executed leases so as to mislead the court.

30. Plaintiff obtained by subpoena from their lending institutions Taylor and Subramanyam's signed leases which proved that Taylor and Subramanyam both signed leases including section 7A. These documents disproved their claims as they assigned the cellar to the exclusive use of the leaseholder of Unit 1.

31. On 7 November 2012 Plaintiff's attorney presented the evidence of Defendant's fraud upon the court and Judiciary Law 487 violation to Defendant and his clients at Yonker's office. Instead of

following the Rules of Professional Conduct and withdrawing the frivolous¹ action Mr. Yonker & his clients doubled down and began to accuse Plaintiff of taking money from the COOP. This was a second attempt to mislead the court. Yonker eventually admitted in open court on the record he had no evidence.

32. While the section 130-1.1 defines as frivolous an action that meets any one of the three criteria listed, Yonker's actions clearly comported with all three definitions of a frivolous action.

33. Defendants during the litigation of KSC 6548-2012 made multiple false representations to the court both at oral arguments and in papers submitted.

34. Further Yonker represented to the court that subletting of Unit 2 by Wynkoop was without shareholder approval, which was contradicted by his client's own sworn statements.

35. Overall, the entirety of the derivative complaint appeared as a farce, and Taylor, Subramanyam and their attorney Michael T. Yonker were exposed as frauds, attempting to deceive the court with falsified documents, inconsistent testimony, and outright misrepresentations. A great deal of cost had already been expended by Taylor and Subramanyam at this point. However, faced with the mounting defectiveness of their complaint, and with the falsehoods exposed, Michael Yonker began a massive campaign of motion practice to obfuscate their deceit and malfeasance by alleging as many new

1 Rules of the Chief Administrative Judge - Section 130-1.1

(c) For purposes of this Part, conduct is frivolous if: (1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law; (2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or (3) it asserts material factual statements that are false.

Frivolous conduct shall include the making of a frivolous motion for costs or sanctions under this section. In determining whether the conduct undertaken was frivolous, the court shall consider, among other issues the (1) circumstances under which the conduct took place, including the time available for investigating the legal or factual basis of the conduct; and (2) whether or not the conduct was continued when its lack of legal or factual basis was apparent, should have been apparent, or was brought to the attention of counsel or the party.

allegations of Plaintiff's malfeasance – not the least of which was that Plaintiff was embezzling money from the Company.

36. In addition, Taylor, Subramanyam and their attorney asserted that they did not commit any fraud on the court; they continued to assert that the unexecuted lease (which failed any test of best evidence) was the lease they understood to have executed (impliedly accusing Wynkoop of fraudulent misrepresentation and fraudulently altering the agreements they executed before they were signed); that they committed no fraud simply because to present the unexecuted lease and the rider (even though they were presented as separate documents and alleged to have been separate); and further alleged that the 27 year old Rider that was part of the 27 year old Proprietary Leases was not properly ratified under the bylaws and therefore a misrepresentation (impliedly alleged as the responsibility of Plaintiff). The fact that Yonker and Taylor, who are allegedly conversant with the law, or is at least possessed of the ability to research the necessary law, would continue such assertions and allegations given the longstanding legal precedent and common law doctrine regarding contract law – assertions and allegations which go entirely against the accepted law - is astounding and is a clear indication of intent to attempt to mislead the court.

37. To further obfuscate the matter of their fraud, the Taylor, Subramanyam and their attorney filed motions in an attempt to disqualify the counsel representing the Company. Counsel was retained for the Company to defend against false complaints made by Taylor and Subramanyam in an attempt to manufacture facts to support the allegations and claims they had already made in their complaint. Claims for which they had no evidence. They committed acts which essentially made the Company an adversary, which also incurred corporate waste to the Company which had to pay for legal assistance to defend such malfeasance on their part. Now, they were incurring further corporate waste to the

Company by attempting to disqualify its counsel on the basis that the Company's counsel recognized their fraud and the consequence such fraud would likely have to the Company.

38. Michael T. Yonker began by falsely accusing Plaintiffs' attorney of misconduct – asserting that counsel for Plaintiffs “threatened” Mr. Taylor with disciplinary action to prevent him from practicing law because of his fraud and deceit upon the court unless he settled.² Yonker also falsely accused Wynkoop of various other alleged erratic acts and aggressive behavior, presenting limited evidence around which to fashion bogus tales.³ The sole purpose of these false accusations was to create scandal and cast false light upon Plaintiff, which violates CPLR §3024(b) as Yonker and Taylor should have known.

39. Through the pendency of Taylor -v- Wynkoop Yonker pushed his lies as truth in an attempt to deceive the court. In some cases his deception worked and caused the court to rule to the detriment of Plaintiff and 622A President Street Owners Corporation, thus not only did he attempt Fraud Upon the Court, but Yonker and his co-conspirators succeeded in this illegal and unethical quest.

FIRST CAUSE OF ACTION
(ATTORNEY DECIET – JUDICIARY LAW 487)

40. Plaintiff incorporates by reference the allegations in the above paragraphs as if they were fully set forth herein.

41. Defendant Yonker attempted to mislead the court by hiding the true nature of his client's Proprietary Leases from the court.

42. Upon information and belief Yonker had access to his clients' executed contracts and had they not been presented to him he had a duty under the rules of professional conduct to make a proper

² Evidence was subsequently obtained from Yonker which establish that the Yonker and his clients had manufactured this allegation.

³ Again Taylor, Subramanyam and their attorney were thwarted with superior evidence, presenting more detailed facts which told a dramatically different story than they were alleging.

search for his clients' actual contracts including if need be requesting copies from those who wrote the loans his clients relied upon if his clients denied having their own copies of the contracts.

43. That this misleading was intentional is demonstrated by his failure to withdraw the frivolous cause of action upon being presented with hard evidence of his client's true contracts.
44. Yonker attempted to mislead the court by accusing Plaintiff of misuse of COOP funds in motion practice. A frivolous allegation that he admitted on the record in open court he had no evidence to substantiate.
45. That Yonker did this intentionally is shown by his failure to take corrective action under the rules of professional conduct when the truth about his clients' leases was laid bare before him. Had he simply failed to do due diligence Yonker would have still been in violation to the rules of professional conduct, but to be presented with his client's own signed contracts which disproved the claim he had brought against Plaintiff and not take prescribed corrective action found in the rules sounds clearly of intent.
46. As a result of the foregoing, Plaintiff has suffered damages as a direct and proximate result of Defendant's actions, and is entitled to actual, compensatory and punitive damages.
47. At a minimum Plaintiff is entitled to a judgement in Plaintiff's favor under Judiciary Law 487 for three times Plaintiff's costs to defend the frivolous 2012 action.

SECOND CAUSE OF ACTION
(FRAUD UPON THE COURT)

48. Plaintiff incorporates by reference the allegations in the above paragraphs as if they were fully set forth herein.
49. Fraud upon the court is does not have the same elements as ordinary fraud. The Court of Appeals in *CDR Creances S.A.S. v Cohen 2014 NY Slip Op 03294* said that Fraud Upon The Court

must be shown by clear and convincing evidence that an attempt was made to mislead the court, present false evidence, falsify records, or present false testimony. In the instant action Yonker presented false testimony in the form of affidavits from Hillary (Pennington) Taylor which contradicted each other. There is no need to prove which is false, they both could not be true. Further as outlined above Yonker represented to the court that a document that was not his clients' contract represented the contract they signed.

50. Presenting false testimony and false evidence meets the test from the Court of Appeals as to establish a claim for Fraud Upon The Court.

51. That Yonker did this intentionally is shown by his failure to take corrective action under the rules of professional conduct when the truth about his clients' leases was laid bare before him. Had he simply failed to do due diligence Yonker would have still been in violation to the rules of professional conduct, but to be presented with his client's own signed contracts which disproved the claim he had brought against Plaintiff and not take prescribed corrective action sounds clearly of intent.

52. As a result of the foregoing, Plaintiff has suffered damages as a direct and proximate result of Defendant's actions, and is entitled to actual, compensatory and punitive damages.

THIRD CAUSE OF ACTION
(CONSPIRACY TO COMMIT FRAUD UPON THE COURT)

53. Plaintiff incorporates by reference the allegations in the above paragraphs as if they were fully set forth herein.

54. Upon information and belief Shareholders Taylor and Subramanyam are capable of reading and understanding the English language at a Doctoral level since they both hold doctoral degrees, Taylor a JD and Subramanyam a PHD.

55. Upon information and belief Yonker holding a JD can understand the English Language at a Doctoral Level.
56. Taylor and Subramanyam both executed their Proprietary Leases in their own hand.
57. Upon information and belief neither a Doctor, nor a Lawyer would be so stupid as to destroy their copy of the Proprietary Lease for their Coop Apartment.
58. Upon information and belief Defendant and his clients knew that copies of the Proprietary Lease were held by Taylor and Subramanyam's mortgage companies along with the original of their stock certificates.
59. Yonker held himself out as an attorney who practiced landlord/tenant and real estate law and as such, upon information and belief, would have known he could obtain true copies of his client's leases from their lenders.
60. Upon information and belief both Yonker and Taylor as attorneys have an understanding of signed contracts.
61. Before bringing action against Plaintiff Taylor requested the use of part of Plaintiff's cellar for storage. Plaintiff refused.
62. Upon information and belief Taylor and Subramanyam desired to sell their apartments starting in late 2011 and to maximize their profit desired space be set aside in the building's cellar for storage for each apartment.
63. Upon information and belief understanding that the lease they signed precluded Taylor and Subramanyam from obtaining cellar space in the building they conspired with their then Attorney Yonker to conceal their true leases from the court and enter into a campaign of falsehoods via the court in an attempt to interfere with Plaintiff's leasehold and unjustly enrich themselves by adding storage

space not defined in the leases to their apartments and becoming the only owners of 622A President Street Owners Corporation by using the courts to cancel Wynkoop's shares.

64. Upon information and belief having such storage would make Taylor and Subramanyam's apartments more valuable.
65. Upon information and belief having all 5 habitable floors to split between the two of them would offer Taylor and Subramanyam either much larger apartments or an income stream from rental.
66. At the time of their attempt to wield the court as a weapon against Plaintiff both Taylor and Subramanyam were starting new families for which a roughly 550 square foot apartment would be too cramped.
67. Upon information and belief to maximize their profit at sale they conspired with Yonker to first threaten Wynkoop by serving upon him a "Draft Complaint" and giving him less than 7 days to agree to all of their demands, then to actually serve the complaint knowing full well that the material they concealed from the court would prove they had no claim upon which relief could be granted.
68. This conspiracy continues to the present day as Taylor and Subramanyam have together, but without Yonker, filed false instruments with government agencies (HPD) and with the Civil Court for Kings County, Housing Division in an attempt to evict Plaintiff and cancel his shares.
69. As a result of the foregoing, Plaintiff has suffered damages as a direct and proximate result of Defendants' actions, and is entitled to actual, compensatory and punitive damages.

DEMAND FOR JUDGEMENT

70. WHEREFORE, Plaintiff Brett Wynkoop respectfully demands judgement against Defendant as follows:

a) Under the first cause of action against Michael T Yonker for judgement in Plaintiff's favor in an amount three times costs to defend KSC-6548-2012 and a jail sentence of 11 months confinement, together with all equitable relief and remedies, including, but not limited to, actual damages, compensatory damages, punitive damages (if applicable) to be determined by the court.

b) Under the second cause of action against Michael T Yonker for judgement in Plaintiff's favor in an amount exceeding the jurisdiction of all lower courts which would otherwise have jurisdiction over this matter, together with all equitable relief and remedies, including, but not limited to, actual damages, compensatory damages, punitive damages (if applicable) to be determined by the court.

c) Under the third cause of action against Michael T Yonker for judgement in Plaintiff's favor in an amount exceeding the jurisdiction of all lower courts which would otherwise have jurisdiction over this matter, together with all equitable relief and remedies, including, but not limited to, actual damages, compensatory damages, punitive damages (if applicable) to be determined by the court.

AFFIDAVIT OF VERIFICATION

STATE OF NEW YORK:

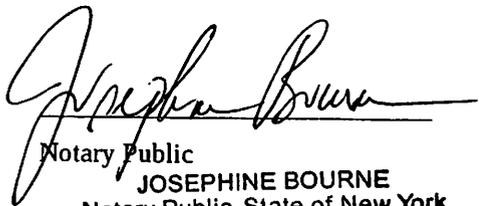
COUNTY OF KINGS :ss.

Brett Wynkoop being duly sworn deposes and says that he is the Plaintiff in this proceeding; that he has written this Complaint and knows the contents thereof; that the same is true to the knowledge of deponent except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes them to be true.

Sworn before me on the
13 day of November, 2019.



Brett Wynkoop
622A President Street
Brooklyn, NY 11215
917-642-6925
wynkoop@tekhq.com



Notary Public
JOSEPHINE BOURNE
Notary Public, State of New York
No. 04BO6725374
Qualified in Kings County
Commission Expires July 26, 2023